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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD and HARRIET VAN LOO,

Plaintiffs,

Case No. 2014 - __________

v

Hon. ____________________

CAJUN OPERATING COMPANY d/b/a **CHURCH'S CHICKEN**, a Delaware Corporation, **RELIANCE STANDARD LIFE INSURANCE COMPANY GROUP LIFE POLICY (Policy Number GL 140042)** an employee welfare benefit plan and **RELIANCE STANDARD LIFE INSURANCE COMPANY**, an Illinois Corporation, Jointly and Severally,

Defendants.
____/

SOMMERS SCHWARTZ, P.C.
By: Daniel D. Swanson (P29288)
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____/

COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs, DONALD AND HARRIET VAN LOO, by and through their attorneys, SOMMERS SCHWARTZ, P.C. and for their Complaint

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against Defendants, CAJUN OPERATING COMPANY d/b/a CHURCH'S CHICKEN, RELIANCE STANDARD LIFE INSURANCE COMPANY GROUP LIFE POLICY (Policy Number GL 140042) and RELIANCE STANDARD LIFE INSURANCE COMPANY, jointly and severally, state as follows:

NATURE OF ACTION

1. This is a civil complaint brought under ERISA § 502, 29 U.S.C. § 1132, and federal common law, regarding breach of the terms of an employee benefit plan and breach of fiduciary duty, for the purpose of compelling Defendants to provide certain life insurance benefits to Plaintiffs (beneficiaries of this employee benefit plan), in the amounts and at the coverage levels promised and for recovery of damages, costs, attorney fees and other such relief as may be just and appropriate.

PARTIES

2. Plaintiffs, DONALD AND HARRIET VAN LOO, are the beneficiaries, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(8), in a welfare plan called "Group Life Policy – Policy Number GL 140042" by virtue of their late daughter, Donna Van Loo's, employment with Defendant, CAJUN OPERATING COMPANY d/b/a CHURCH'S CHICKEN ("CHURCH'S"). Plaintiffs reside in the City of Rochester Hills, Oakland County, Michigan.

3. CHURCH'S is incorporated in the State of Delaware and conducts business in Wayne County, Michigan. CHURCH'S is a fiduciary and administrator,

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within the meaning of ERISA §§ 3(16), 402(a)(2), 29 U.S.C. §§ 1002(16), 1102(a)(2), with respect to the RELIANCE STANDARD LIFE INSURANCE COMPANY GROUP LIFE POLICY (Policy Number GL 140042) (the "Group Life Policy").

4. The Group Life Policy is a welfare benefit plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). The Group Life Policy was issued by Defendant, RELIANCE STANDARD LIFE INSURANCE COMPANY ("RELIANCE") to CHURCH'S, as the policyholder.

5. RELIANCE is incorporated in the State of Illinois and conducts business in Wayne County, Michigan. RELIANCE is the claims administrator for the Policy.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 1132(e)(1).

7. Venue is proper pursuant to 29 U.S.C. § 1132(e)(2).

GENERAL ALLEGATIONS

8. By way of a May 16, 2007 letter, CHURCH'S offered Plaintiffs' daughter, Donna Van Loo, full-time employment.

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9. In its letter, CHURCH'S stated that Ms. Van Loo would be eligible to participate in "Health and Welfare Benefits," such as "Employee-Paid benefits includ[ing] Supplemental Life Insurance . . ."

10. CHURCH'S was the designated policyholder and administrator of the Group Life Policy.

11. RELIANCE was designated the claims administrator of the Group Life Policy.

12. However, during the relevant time period, RELIANCE undertook responsibilities as the Administrator of the Group Life Policy.

13. The Group Life Policy provided both "Basic Life and Accidental Death and Dismemberment" ("Basic Life") benefits and "Supplemental Life" benefits ("Supplemental Life Insurance Benefits").

14. While employed by CHURCH'S, Ms. Van Loo was a participant in the Group Life Policy; specifically she enrolled in and paid premiums for both Basic Life and Supplemental Life Insurance Benefits.

15. At the time of Ms. Van Loo's death on March 4, 2013, she was employed by CHURCH'S and was a participant in the Group Life Policy.

16. Defendants' refusal to pay to the Plaintiffs $314,000 in Group Life Policy benefits is the subject of this Complaint.

17. On May 21, 2007 Ms. Van Loo began employment with CHURCH'S.

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18. On July 29, 2007, Ms. Van Loo filled out a CHURCH'S "2007 Benefit Enrollment/Change Form." Ms. Van Loo specifically elected "Supplemental Life and Accident Death & Dismemberment Insurance" and as a salaried employee, she selected "2x salary." At the time, Ms. Van Loo earned an annual salary of $100,000.

19. The 2007 Benefit Enrollment/Change Form that Ms. Van Loo completed did not indicate that she was required to provide any sort of evidence of good health or complete an Evidence of Insurability Form ("EIF") as a condition for obtaining the Supplemental Life Insurance Benefits.

20. Further, a good health/insurability and/or EIF form was never mailed or otherwise provided to Ms. Van Loo.

21. Beginning with Ms. Van Loo's July 6, 2007 Earnings Statement, CHURCH'S deducted $14.80 from her bi-weekly paychecks to cover the premium for the Supplemental Life Insurance Benefits.

22. On November 11, 2007, Ms. Van Loo submitted to CHURCH'S a "2008 Open Enrollment Change Form" relative to her employee benefits and increased the amount of her Supplemental Life Insurance Benefits to "3x salary."

23. Ms. Van Loo's Earnings Statements from CHURCH'S indicate that for the additional Supplemental Life Insurance Benefits premium, CHURCH'S increased its deduction to $39 from each of Ms. Van Loo's paychecks.

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24. On November 11, 2008, Ms. Van Loo continued for 2009 her election for "3x salary" in Supplemental Life Insurance Benefits.

25. As of January 2, 2009, CHURCH'S increased the premium payment deduction to $40.04 from each of Ms. Van Loo's paychecks for the Supplemental Life Insurance Benefits.

26. Ms. Van Loo continued her election for "3x salary" Supplemental Life Insurance Benefits in 2010.

27. As of December 31, 2009, CHURCH'S increased Ms. Van Loo's premium deduction to $40.82 per paycheck.

28. In 2011, Ms. Van Loo changed her election for Supplemental Life Insurance Benefits and increased it to "4x salary."

29. As of January 14, 2011, CHURCH'S modified Ms. Van Loo's premium deduction for Supplemental Life Insurance Benefits to $37.28 per paycheck.

30. Ms. Van Loo continued her election of Supplemental Life Insurance Benefits of "4x salary" in 2012.

31. In 2012, CHURCH'S increased Ms. Van Loo's premium deduction to $54.24 per paycheck for the Supplemental Life Insurance Benefits.

32. Likewise, in 2013 Ms. Van Loo continued the same election of "4x salary" for Supplemental Life Insurance Benefits.

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33. Upon Ms. Van Loo submitting her Benefit Enrollment form for 2013 in which she elected "4x salary" for her Supplemental Life Insurance Benefits, CHURCH'S generated a message congratulating her on "completing [her] benefits enrollment for 2013."

34. In 2013, CHURCH'S increased Ms. Van Loo's premium deduction to $97.02 per paycheck for the Supplemental Life Insurance Benefits.

35. Ms. Van Loo became ill in late December 2012 and subsequently began a disability leave.

36. Ms. Van Loo remained off of work on disability leave until she died on March 4, 2013.

37. Shortly before Ms. Van Loo's death, CHURCH'S sent her a letter (dated February 16, 2013) advising her that since she was on disability leave and was no longer receiving regular paychecks, she had to pay it directly the $97.31 bi-weekly premium to retain the Supplemental Life Insurance Benefits.

38. Ms. Van Loo continued to pay CHURCH'S the premiums for the Supplemental Life Insurance Benefits while she remained on disability leave.

39. On March 18, 2013, two weeks after Ms. Van Loo died, Plaintiffs submitted, and RELIANCE received, a Proof of Loss Claim Statement under the Group Life Policy. At the time of her death, Ms. Van Loo's annual salary was $122,200 and in addition to her Basic Life benefit, she had elected and paid the

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premiums for Supplemental Life Insurance Benefits of four times her annual salary. Plaintiffs sought to obtain a Group Life Policy benefit in the amount of $614,000.

40. By way of an April 17, 2013 letter, RELIANCE notified CHURCH'S (with a copy of the letter going to Plaintiffs) that it was denying Plaintiffs' claim for Group Life Policy benefits in excess of the $300,000 "Guaranteed Issue" amount.

41. In denying the full amount of Plaintiffs' claim, RELIANCE cited the Group Life Policy's provisions requiring an EIF for coverage in excess of $300,000.

42. At no time during her employment with CHURCH'S did Defendants ever make available and/or provide to Ms. Van Loo the Group Life Policy.

43. Further, at no time during her employment with CHURCH'S, did Defendants ever inform Ms. Van Loo that as a condition for her obtaining Supplemental Life Insurance Benefits, she was required to submit a good health/insurability and/or EIF form.

44. Finally, at no time during her employment with CHURCH'S, did Defendants ever mail or otherwise provide Ms. Van Loo with a good health/ insurability and/or EIF form with instructions that she complete and submit it to them as a condition for her obtaining Supplemental Life Insurance Benefits.

45. On or about April 16, 2013, RELIANCE issued payment of $300,000 under the Group Life Policy to Plaintiffs, representing $125,000 in Basic Life benefits under the Policy and $175,000 in Supplemental Life Insurance Benefits.

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46. Despite RELIANCE issuing payment of $175,000 representing Supplemental Life Insurance Benefits, the true amount owed to Plaintiffs in Supplemental Life Insurance Benefits was $489,000 (4x Ms. Van Loo's salary of $122,200). Thus, the total amount of life insurance benefits that Plaintiffs are entitled to is $614,000 ($489,000.00 for Supplemental Life Insurance Benefits plus $125,000 for Basic Life).

47. In its April 17, 2013 correspondence, RELIANCE acknowledged that Ms. Van Loo's 4x salary life insurance coverage election equated to an approximately $489,000 benefit based upon her annual earnings of $122,200. Nevertheless, RELIANCE concluded:

> "As the total amount of basic and supplemental life insurance coverage exceeded the guarantee issue amount of $300,000, proof of good health was required. Such proof was never received in our office. Consequently, the benefit available for the group life insurance is $300,000.00. We cannot honor the benefit of $614,000.00."

48. RELIANCE directed CHURCH'S to issue a refund of all premium amounts paid by Ms. Van Loo for Supplemental Life Insurance Benefits under the Policy.

49. Two months later, Plaintiffs received a check from CHURCH'S in the amount of $3,900.76, which it represented constituted the refund of Ms. Van Loo's premium payments for the Supplemental Life insurance coverage.

50. Plaintiffs never cashed CHURCH'S premium refund check.

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51. Instead, on June 13, 2013, Plaintiffs appealed RELIANCE'S April 17, 2013 determination denying them life insurance benefits in excess of $300,000.

52. On August 1 and August 5, 2013, Plaintiffs made written document requests to both CHURCH'S and RELIANCE pursuant to Section 25260.503-1 of the ERISA Claims Procedure. Specifically, Plaintiffs requested , among other things, any documents evidencing that any time throughout her almost 6 years of employment with CHURCH'S and her participation in the Group Life Policy, Defendants provided Ms. Van Loo with an EIF form or requested that she complete an EIF form.

53. Neither CHURCH'S nor RELIANCE provided any documentary evidence that either or both ever provided Ms. Van Loo with an EIF form or requested that she complete an EIF form.

54. On September 26, 2013, Plaintiffs submitted to RELIANCE a supplement to their June 13, 2013 appeal.

55. On November 1, 2013, RELIANCE issued a correspondence affirming its April 17, 2013 denial of Plaintiffs' claim for the full amount of Supplemental Life Insurance Benefits.

56. Plaintiffs have exhausted their administrative remedies, and thus file this Complaint for relief.

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COUNT I:
ACTION UNDER ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(1)(B),
TO RECOVER FULL BENEFITS

57. At all times prior to her untimely death, Ms. Van Loo fulfilled all of the eligibility requirements to receive the full amount of Supplemental Life Insurance Benefits under the Group Life Policy.

58. Throughout her approximately six years of employment with CHURCH'S, Ms. Van Loo timely and consistently paid the full amount of all premiums due for Supplemental Life Insurance Benefits under the Group Life Policy.

59. Annually, Ms. Van Loo filled out and submitted election forms to CHURCH'S for benefits under the Group Life Policy and consistently elected to receive Supplemental Life Insurance Benefits.

60. Defendants never notified Ms. Van Loo that an EIF form was required in connection with her Supplemental Life Insurance Benefits elections and/or provided Ms. Van Loo with an EIF form to complete.

61. Over the course of almost six years, CHURCH'S and RELIANCE accepted Ms. Van Loo's premiums and election paperwork for Supplemental Life Insurance Benefits under the Group Life Policy, knowing that she never submitted an EIF form.

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62. At the time of her death, Ms. Van Loo's Supplemental Life Insurance Benefits election was for "4x salary" and her annual salary was $122,200.

63. On March 18, 2013, Plaintiffs timely submitted, and RELIANCE received, a Proof of Loss Claim Statement for the full amount of Supplemental Life Insurance Benefits under the Group Life Policy.

64. RELIANCE wrongfully concluded that Plaintiffs were not entitled to any life insurance under the Group Life Policy in excess of $300,000, and it refused to pay an additional $314,000 in Supplemental Life Insurance Benefits owed to Plaintiffs.

65. Significantly, the Group Life Policy contains an "incontestability" clause, which states that:

> "Any statement made in your application will be deemed a representation, not a warranty. **We cannot contest this Policy after it has been in force for 2 years from the date of issue, except for non-payment of premium.**" (Emphasis added).

66. RELIANCE is foreclosed from asserting the defense of Ms. Van Loo's failure to submit an EIF in connection with its denial of Plaintiffs' outstanding Supplemental Life Insurance Benefits.

67. Based on the evidence, RELIANCE'S denial of the full amount of Plaintiffs' Supplemental Life Insurance Benefits was arbitrary and capricious and otherwise in violation of the Group Life Policy.

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COUNT II:
ACTION UNDER ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3),
FOR BREACH OF FIDUCIARY DUTY

68. Plaintiffs restate and incorporate paragraphs 1 through 67.

69. Pursuant to ERISA § 404(a), 29 U.S.C. § 1104(a), as fiduciaries and administrators with respect to the Policy, Defendants have and had a duty to discharge their duties with respect to the Policy solely in the interest of the Policy participants and their beneficiaries.

70. Defendants made material misrepresentations to Ms. Van Loo through their affirmative statements and omissions, about her eligibility and extent of Supplemental Life Insurance Benefits under the Group Life Policy.

71. Specifically, Defendants accepted Ms. Van Loo's premiums for Supplemental Life Insurance Benefits for almost six years.

72. During the same time period, Defendants also accepted Ms. Van Loo's benefit election forms.

73. At no time did Defendants ever advise Ms. Van Loo that her filling out and submitting an EIF was a condition precedent to her eligibility for Supplemental Life Insurance Benefits in excess of a total life insurance benefit amount of $300,000.

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74. Significantly, at no time during her employment with CHURCH'S did Defendants ever make available and/or provide to Ms. Van Loo the Group Life Policy.

75. Only a few weeks prior to her death, by way of a letter dated February 16, 2013, CHURCH'S advised Ms. Van Loo that since she was on disability leave and was no longer receiving regular paychecks, she had to pay it directly the $97.31 bi-weekly premium to retain the Supplemental Life Insurance Benefits.

76. Ms. Van Loo relied upon Defendants' statements and omissions to her detriment.

77. Prior to her death, Ms. Van Loo believed and reasonably relied upon Defendants' representations that she was entitled to Supplemental Life Insurance Benefits under the Policy for an amount exceeding $300,000.

78. Defendants breached their fiduciary duties to Ms. Van Loo and Plaintiffs by misrepresenting Ms. Van Loo's eligibility for Supplemental Life Insurance Benefits under the Group Life Policy and by refusing to pay Plaintiffs Ms. Van Loo's full Supplemental Life Insurance Benefits.

COUNT III: EQUITABLE ESTOPPEL

79. Plaintiffs restate and incorporate paragraphs 1 through 78.

80. On or about February 21, 2013, less than a month prior to her death, CHURCH'S sent a letter to Ms. Van Loo informing her that to retain her

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Supplemental Life Insurance Benefits, she had to pay the premiums due while she remained on disability leave.

81. The February 21, 2013 letter is consistent with representations that Defendants made to Ms. Van Loo throughout her employment with CHURCH'S that she was covered for the full amount of Supplemental Life Insurance Benefits under the Group Life Policy.

82. At no time did Defendants ever provide Ms. Van Loo with a copy of the Group Life Policy and specifically, the policy provisions requiring that she submit an EIF form as a condition for coverage above $300,000.

83. At all times CHURCH'S accepted Ms. Van Loo's premiums for Supplemental Life Insurance Benefits.

84. At all times, CHURCH'S accepted Ms. Van Loo's benefit election forms for Supplemental Life Insurance Benefits.

85. Defendants failed to provide Ms. Van Loo with the EIF form and/or requested that she fill out an EIF form and submit it to them.

86. Defendants failed to communicate to Ms. Van Loo that she would lose her Supplemental Life Insurance Benefits if she did not submit an EIF form.

87. Through their actions and inactions, Defendants intentionally deceived Ms. Van Loo with respect to the amount of her coverage under the Group Life Policy.

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88. Defendants' actions and inactions in administering the Group Life Policy with respect to Ms. Van Loo amounted to such gross negligence as to rise to the level of constructive fraud.

89. This case involves extraordinary circumstances in which the balance of equities strongly favors the application of estoppel.

90. Based on their above actions and inactions Defendants have also waived any defense relating to Ms. Van Loo failing to submit an EIF.

91. Accordingly, Defendants must be estopped from denying Plaintiffs, in their capacity as Ms. Van Loo's beneficiaries, the additional $314,000 in Supplemental Life Insurance Benefits to which they are entitled.

92. Further, pursuant to the principles of waiver, by their actions and inaction, Defendants waived any defense relating to Ms. Van Loo's failure to submit an EIF or other proof of good health form in connection with denying Plaintiffs' claim for $314,000 in Supplemental Life Insurance Benefits.

COUNT IV: UNJUST ENRICHMENT

93. Plaintiffs restate and incorporate paragraphs 1 through 92.

94. Defendants breached their fiduciary duties owed to Ms. Van Loo and Plaintiffs, as beneficiaries, when Defendants wrongfully denied Plaintiffs' claim for the full amount of Supplemental Life Insurance Benefits.

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95. As a result of Defendants wrongfully withholding $314,000 in Supplemental Life Insurance Benefits from Plaintiffs, Defendants have been unjustly enriched and have unfairly profited from funds that should have gone to Plaintiffs.

96. Therefore, any monetary benefit gained by Defendants in utilizing these funds must be disgorged and awarded to Plaintiffs under the principles of unjust enrichment and disgorgement of profits.

COUNT V: ACTION UNDER ERISA § 502(a), 29 U.S.C. § 1132(a), FOR VIOLATION OF ERISA § 502(c), 29 U.S.C. § 1132(c)

97. Plaintiffs restate and incorporate paragraphs 1 through 96.

98. ERISA, Section 1132(c) provides for penalties for a Plan Administrator's violation of its duty to respond to written requests for information.

99. The federal regulations interpreting ERISA state that, in order to provide a full and fair review, the Plan must:

> Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section . . .

29 CFR 2560.503-1(h)(2)(iii).

100. Section (m)(8) states that, "The following terms shall have the meaning ascribed . . . whenever such term is used in this section:

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> (8) A document, record, or other information shall be considered "relevant" to a claimant's claim if such document, record, or other information
>
> (i) Was relied upon in making the benefit determination;
>
> (ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;

20 CFR 2560.503-1(m)(8).

101. On August 1 and August 5, 2013, Plaintiffs made written document requests to Defendants requesting, among other things, any documents evidencing that any time throughout her almost 6 years of employment with CHURCH'S and her participation in the Supplemental Life Insurance Benefits plan, Defendants provided Ms. Van Loo with an EIF form or requested that she complete an EIF form.

102. Defendants failed or refused to provide the requested information to Plaintiffs.

103. Defendants' failure and/or refusal to provide relevant documentation is in direct contravention of ERISA's provisions regarding documents which must be provided to beneficiaries.

104. On November 1, 2013, RELIANCE issued a correspondence affirming its April 17, 2013 denial of Plaintiffs' claim for the full amount of Supplemental

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Life Insurance Benefits based upon documents which it failed or refused to provide to Plaintiffs pursuant to their earlier document production requests.

105. As a result of its failure or refusal to timely provide Plaintiffs with the documents upon which it based its denial of their appeal, RELIANCE'S denial of that appeal was arbitrary and capricious and should be set aside.

WHEREFORE, Plaintiffs request that this Court grant the following relief in their favor and against Defendants, CAJUN OPERATING COMPANY d/b/a CHURCH'S CHICKEN, RELIANCE STANDARD LIFE INSURANCE COMPANY GROUP LIFE POLICY (Policy Number GL 140042) and RELIANCE STANDARD LIFE INSURANCE COMPANY:

a. A declaratory judgment pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B), and 28 U.S.C. § 2201, declaring that Plaintiffs are entitled to the full amount of Supplemental Life Insurance Benefits and that Defendants violated the Policy terms and their fiduciary duties by refusing to pay the full amount of Supplemental Life Insurance Benefits;

b. An Order compelling Defendants to pay Plaintiffs forthwith the full amount of life insurance benefits due them, including interest on all unpaid benefits;

c. Equitable estoppel, surcharge and any other "make whole" relief as a result of Defendants' wrongful actions alleged in this Complaint;

d. Disgorgement of any profits or gain Defendants have obtained as a result of the wrongful actions alleged in this Complaint and equitable distribution of any profits or gain to Plaintiffs;

e. Penalties under ERISA § 502, 29 U.S.C. § 1132(c) for Defendants' illegal refusals to provide Plaintiffs relevant documentation;

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f. Reasonable attorney fees and costs, pursuant to ERISA § 502, 29 U.S.C. § 1132(g)(1); and

g. Such other relief as may be just and appropriate.

/s/ Tad T. Roumayah
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Dated: February 10, 2014

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD and HARRIET VAN LOO,

Plaintiffs,

Case No. 2014 - __________

v

Hon. ____________________

CAJUN OPERATING COMPANY d/b/a **CHURCH'S CHICKEN**, a Delaware Corporation, **RELIANCE STANDARD LIFE INSURANCE COMPANY GROUP LIFE POLICY (Policy Number GL 140042)** an employee welfare benefit plan and **RELIANCE STANDARD LIFE INSURANCE COMPANY**, an Illinois Corporation, Jointly and Severally,

Defendants.
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DEMAND FOR TRIAL BY JURY

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NOW COME Plaintiffs, DONALD AND HARRIET VAN LOO, by and through their attorneys, SOMMERS SCHWARTZ, P.C., and hereby demand a trial by jury relative to the above matter.

/s/ Tad T. Roumayah
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Dated: February 10, 2014